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## THE ALIEN IN RELATION TO OUR LAWS

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A native of one country who takes up his residence in another is obviously a political and national "misfit" in his new surroundings. Such "misfit" may be temporary or permanent, partial or complete, depending on a variety of causes, subjective or objective, some of which we shall have occasion hereinafter to consider.

An alien, as such "misfit" is technically called, is "fitted" into the body-politic, more or less successfully, by the highly conventional legal method of naturalization, and into the body-national by the subtler process of assimilation.

In countries of little immigration the problem of "fitting-in" aliens is of little practical importance, except that it occasionally calls upon diplomacy and international jurisprudence to disentangle some intricate questions of conflict of laws. But in countries like ours, where every year hundreds of thousands pour in from every part of the world, where whole villages and townships of peoples, alien to our history and race, are transferred from abroad, the problem of politically and nationally "fitting in" these outsiders is one of surpassing importance.

In older countries alien residents are, at most, such a small minority that their readiness to "fit" politically into the new jurisdiction, or socially and economically into the new environment is, in most instances, an interesting rather than a practical question; they are overwhelmed by mere force of numbers.

With us, instead, the question is eminently a practical one, and as such we shall study it from two distinct points: first, that of the alien trying to "fit" into the new country, and then that of our country trying to "fit" itself to this enormous alien mass.

The disabilities of an alien in a foreign land are either historical or actual. Historically an alien, entering a foreign state, was considered, if not an enemy, at best a suspicious person. With very few exceptions he was actively discouraged from staying in the new coun-

try and every obstacle was thrown in the way of his settling or owning property there. Commerce removed some of these obstacles, and international goodwill is destroying others.

The actual disabilities of aliens are due to differences between the life, customs, laws and language to which they are born and those they find in the country of emigration. They vary, practically, with each individual; they are accentuated by ignorance, inexperience, lack of courage, and profound differences in historical, political and social precedents.

All such disabilities, historical or actual, are met and their rigor attenuated in numberless ways; by culture and international exchanges, whether it be the selling of American machines for Italian marbles, or the mutual lending out of professors between universities of different countries; it is also met unofficially by benevolence, such as by immigrant and travelers' aid societies, and officially by national and international legal enactments. It is with this latter form of aid that we are here principally concerned.

The law has from ancient times recognized the disabilities of the citizen outside his native country and has endeavored to make up for them in sundry ways. The oldest of these is the creation and recognition of the consular office and the gradual development of consular law. Friendly conventions and treaties between the commercial nations of the world and the development of diplomatic and international rights and obligations added strength to the protection thrown around the alien within a foreign jurisdiction.

It should be observed here, and constantly borne in mind, that this weighty structure of protection was built up in the course of those centuries when emigration from one country to another was sporadic and exceptional. But now let us examine at close range the workings of this venerable and high-sounding mechanism in overcoming the political and actual disabilities of an alien from one of the old countries coming today into our territory.

His government has had our official assurance by solemn treaty that he, though an alien, "shall receive . . . the most constant protection" for his person and property. We have also recognized divers officials from his own country as accredited diplomatic or consular officers, and have guaranteed that they may have recourse to our own authorities "whether federal or local, judicial or executive . . . in order to defend the rights and interests of their countrymen."

Let us now take the not infrequent case of some simple peasant from some village of southern Italy, unschooled but intelligent, honest but totally ignorant of most of our municipal ordinances. Let us suppose that for the commission of one of these purely statutory crimes our alien peasant is arrested. Let us assume that when arrested he keeps his wits about him and demands an opportunity to communicate with his consul. What could the average official sent here by foreign governments do with the old-fashioned consular machinery at his command? Bear in mind that in one year the magistrates' courts of the first division of New York City committed or held for trial nearly 30,000 foreign-born persons; that they disposed of nearly 140,000 cases of which probably one-half were natives of some foreign country. Bear in mind also that the subjects of Italy who may apply for aid to their consular officers within the jurisdiction of the New York consulate number nearly 1,000,000 people. Bear in mind, further, that a substantial percentage of such subjects are illiterate and ignorant of our language, and many of them engaged in hazardous labor and not a few the easy prey of swindlers. Consider, also, that except in a few large centers like New York, Chicago and San Francisco, the consular officers of several countries having large numbers of subjects here, are assigned to jurisdictions covering territory more extensive than the geographical area of their native land.

Bearing all this in mind, what diplomatic or consular chancellery, organized to meet conditions of other ages and of well-settled countries, with administrative regulations enacted decades ago and a personnel trained in the old schools—what chancellery—I ask, can meet with any effectiveness the rightful demands of their subjects here?

Such old-fashioned machinery of extra-territorial assistance is rendered even more ineffective in operation by our dishonorable inertia in living up to our treaty obligations; that this government should covenant to protect a foreign citizen within its borders, and when the rights of such citizen are violated, we should plead our inability to protect him on account of the conflict of federal and state rights is conduct well deserving ex-President Taft's appellation of "pusillanimous."

On all sides, therefore, the laws which are intended to meet and attenuate the disabilities of the alien are more apparent than real, more high-sounding than effective. And it is not strange, therefore, that lynchings of foreigners have gone unpunished, that peonage

among immigrants has been not infrequent, that discriminatory legislation against resident alien labor is enacted and enforced and most of the time without challenge, and that the chancelleries of European cabinets protocol every year thousands of complaints from dissatisfied subjects in this country.

On the other hand, there are certain actual disabilities to which an alien is subject among us which it seems practically impossible to meet by any legal enactment. Take, for example, that very substantial handicap of an alien who, being charged with crime, and having the constitutional right of confronting his witnesses and of bearing the testimony adduced against him, can neither, in most cases, understand what is said against him, nor tell his own story except through the very imperfect medium of an interpreter. I have elsewhere pointed out how the interpreter service in our courts, in effect, often deprives an alien accused of crime of certain vital constitutional safeguards,<sup>1</sup> and in another paper I have endeavored to describe certain special forms of fraud to which immigrants are exposed for which no adequate remedy has been devised except in so far as the immigrant-aid bureaus in certain sections have brought some relief.<sup>2</sup>

The first of such bureaus was established several years ago by the Italian government as a quasi-legal office for immigrants in New York City, and others have since been organized in the larger cities substantially upon the plan of the New York bureau. While no official statistics of such offices have been published in this country, some idea of their workings and results may be had by reference to a report made to the Italian Colonial Congress held in Rome in 1911.<sup>3</sup>

Having briefly considered the disabilities of the alien in relation to our laws, let us now look at the other side of the question, at our own disabilities in fitting him into our body-politic and national.

What distinguishes our problem of adjusting the alien to our system, environment and national aspirations from a similar problem in other countries is not merely the great diversity of origin and condi-

<sup>1</sup> *Defects in the Methods of Securing and Using Interpreters*. Report of Gino C. Speranza at the annual meeting of the New York state probation commission, 1911.

<sup>2</sup> "The Relation of the Alien to the Administration of Law," in *Journal of Criminal Law and Criminology*, November, 1910.

<sup>3</sup> *L'Assistenza Legale degli operai Italiani nel Nord America*. Report of Gino C. Speranza to the Congresso Coloniale Italiano (Sezione Quarta) Rome, June, 1911.

tion of those who come to us, but their enormous numerical strength. The "fitting in" of one hundred thousand aliens presents not merely a more complex problem than is presented by the "fitting in" of one hundred, but a distinct and novel series of problems.

We have endeavored in various ways during the last twenty-five years to grapple with such problems by legislative measures which can be roughly divided into two classes: immigration and naturalization restriction.

Before 1882 we had no immigration laws to speak of. Since then a body of statutes have been enacted, variously interpreted and as variously enforced, which, in substance, aim to exclude the feeble-minded, the pauper, the criminal, the contract-laborer and the defective. Some of these statutes are so ingenuously drawn that it is not strange that many undesirable aliens come in, and some desirable ones are barred out.

Especially weak are those provisions of the law which seek to keep out the criminal and the anti-social. Granting that it is difficult to define in law what beliefs and acts shall stamp a man as anti-social, and even assuming, as our laws ingenuously assume, that when we ask the alien, on his arrival, to state his political creed and criminal history, he will answer truthfully, yet we may well challenge the effectiveness of the present test of "belief in organized government" as a measure of our political self-protection. May it not be asked whether even "belief" in "government" organized on an essentially different basis from ours might not be as dangerous to our national life as belief in anarchy or disbelief in "organized government?"

Here, again, precedents of the liberality of other countries in admitting political offenders, or in extending the right of asylum, are really not helpful; they fade into insignificance when their relatively sporadic character is examined in relation to the vast number of aliens who might seek to invoke them when endeavoring to enter our own country. The most rabid anarchist, or even a hundred of them, can be safely left at large in any well-organized, stable democracy. But can this be said of a hundred thousand? And a hundred anti-social men preaching freely in a country of long settled government, with old traditions and customs, and of a homogeneous racial population, are far less dangerous than a like number appealing to, and inflaming the imagination of thousands and thousands who are our "fellow-citizens" only by the most stretched courtesy, who know little or nothing of our government and less of our history.

I have taken an extreme example, although how even such an extreme case is actually possible has been pretty well demonstrated by certain excesses of the Industrial Workers of the World.

Another fundamental defect in our legal provisions for self-protection is that in most of the international agreements where we grant certain rights to, and assume certain obligations towards citizens of foreign states, the "reciprocal" rights granted and the "reciprocal" obligations assumed by foreign governments are reciprocal in form rather than in fact. For instance, the duty of protecting a million subjects of Austro-Hungary is a very different matter from the "reciprocal" duty of the dual monarchy of protecting a handful of American tourists traveling in that empire. So, likewise, it is of little moment to Russia how an American there may become naturalized, and the Czar need not worry over the possibility of ex-subjects of our republic becoming members of the duma and influencing the foreign policy of the empire. But in our country we have seen how a constituency composed largely of former subjects of the Czar may (and we are not concerned here with its wisdom or unwisdom) influence this government to abrogate a treaty with a friendly power.

Or take another and more recent instance of "reciprocity": about a year ago we agreed with Sweden that consular officers of each of the contracting countries should have the right to administer estates of nationals dying intestate in the foreign jurisdiction; thereupon all foreign states with whom we had agreed to grant "the most favored nation" treatment claimed the same right. The result has been that consuls of countries at the opposite end of Europe, like Greece, Italy and Austria, with very large colonies here have practically excluded our own state officials from administering yearly hundreds of thousands of dollars left here by deceased aliens, our courts being obliged to allow clerks and agents of such consulates to earn the commissions fixed by our laws for our administrators.

Another situation calling urgently for relief as a measure of self-protection is the indifference of many of our naturalized citizens to the spirit and political intent of such naturalization. This indifference to the practical obligations of the oath of allegiance is indirectly fostered by the paternal interest of some foreign governments in their emigrant subjects abroad. The emigration laws of Italy and Austria, for instance, excellent and humanitarian as they are, nevertheless effectively keep the immigrant here in close and constant relation with

the fatherland. Alleging the necessity of protecting him because of his ignorance, the emigration officials of such foreign governments follow him from the moment he sails from Europe, and even after he lands here watch paternally over his needs. At home they relax the rules regarding military service so that young men may feel that they can return, even if they have violated the military law; and in certain places, political elections are arranged with due regard to the season when immigrants from the Americas generally return home. An eminent member of the Italian Parliament, commenting on the recent elections in Italy under the new law which extends the electoral franchise to certain classes of illiterates, writes in a quasi-official journal that the striking fact in such elections in the south of Italy (whence most of the new voters come) is that "the *Americani* who, until now, were interested in the political life of only one country—the United States—have been able for the first time to contribute to the formation of the national legislature," and he adds that deputies from such southern provinces assured the writer that "the *Americani* threw themselves into the electoral battle with great vigor."

Granted that there is nothing sacred in what are popularly called Anglo-Saxon institutions, yet if we believe in the great system of self-government developed and stubbornly fought for by the English people through centuries of training and struggle, we may fairly claim that its continuance and stability will depend on a citizenship attached to, and understanding its spirit and history, and in sympathy with its political ideals. Against the influence of great masses of peoples coming to us from every part of the world, with traditions, history and training totally different from ours, most of them belonging to an honest but ignorant and unschooled class, and a very large number of them wholly unused to self-government, we may justly invoke as a measure of legitimate self-protection the provision for a longer and more rigid apprenticeship before granting to aliens the electoral franchise. An Italian observer, trained in our laws and with a wide, sympathetic experience among his compatriots here, has recently urged the advisability of making the term of such apprenticeship fifteen years.<sup>4</sup> I do not think this excessive, though I believe that provision should be made for shortening the time of such appren-

<sup>4</sup> Robert Ferrari, of the New York bar, in the *Journal of Criminal Law and Criminology*, November, 1913.



ticeship on proof of special educational training, or of public, or quasi-public, services rendered.

After this rapid review of a vast field, let us briefly point out certain remedies that suggest themselves for the problems that confront us. To begin with, our laws, both in their national and in their international provisions, should define and recognize the peculiar status of that individual whom we call "immigrant" and whom we consider as subject to very special disabilities, but who, in the eye of an outworn jurisprudence, is merely an alien subject. Nor must we longer hold to the belief that we can adequately protect him or ourselves by exclusively national measures, or by the old international guarantees which contemplated facts and conditions unlike those which exist today in countries of large immigration.

International conferences should be urged by the United States with a view to such agreements as already exist, for instance, for the international protection of laborers, minors and women-workers, between certain states of continental Europe. Special immigration conventions should be sought by which, on the one hand, the possibilities of rejection and the hardships of deportation might be eliminated, and, on the other, the guarantees of foreign coöperation in keeping the criminal and the undesirable out of this country might be strengthened.

Above all, we need an effective strengthening of our laws regarding naturalization. Opinion may differ as to whether we should further restrict the number and character of those who wish to come to our shores; but there can be no substantial disagreement as to the necessity of restricting the right of American citizenship to those aliens only who show by length of residence and by reliable tests of right conduct, that they are fairly entitled to participate in our government.